IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8070 of 2003
with
SPECIAL CIVIL APPLICATION NOS 8072; 8074; 8075;
8076;8078 AND 8077 ALL OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

TRIKAMBHAI DHULABHAI PRAJAPATI

Appearance:
MR. MS RAO, MR. P.D. BHATE AND MR. R.V. DESAI,
ASSTT. G.Ps. for the petitioners in these petitions.
..... for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2003

ORAL JUDGEMENT

Heard learned Asstt. G.P. Mr. M.S. Rao, Mr. P.D. Bhate and Mr. R.V. Desai for the petitioner State of Gujarat in this group of petitions.

In Special Civil Application No. 8072 of 2003, the petitioner State of Gujarat has challenged the order passed by the Gujarat Secondary Education Tribunal at Ahmedabad in Application No. 268 of 2001 dated 20.12.2001 wherein the Tribunal has directed the petitioner to fix the pay of the respondent according to the Government Resolution dated 29th October, 1977 of granting benefit of one increment from the date of his becoming head master and pay the arrears accordingly in cases where such benefits are not granted earlier. The action of the petitioner in withdrawing benefit of one increment given to the respondent original applicant while fixing his salary in the scale of head master is declared as illegal and the same has been quashed and set aside by the tribunal and it has also been held that there shall be no recovery on this count. The Tribunal has also directed the petitioner to carry out the said directions within three months from the date of the order and in case if the order is not implemented by that time, without any reasonable cause, then, it will carry interest at the rate of 10 per cent p.a. after the expiry of three months after the expiry of the period of three months from the date of the order.

Learned advocate Mr. Rao appearing for the petitioner has submitted that the tribunal has misinterpreted the Circular dated 5th January, 1965 which has been produced by the petitioner at annexure-2 page 17 and has submitted that once the assistant teacher receiving the salary in the scale of the post of Head Master and thereafter, if the very same assistant teacher has been appointed on the post of head master, then, that assistant teacher is not entitled for the additional increment while fixing the salary in the post of head master. He also submitted that the tribunal has committed an error in considering the circular dated 5.1.1965 because there is no such provision contained in the said circular giving such benefit to such employee and, therefore, the tribunal has misinterpreted the said circular and has wrongly applied the same to the facts of the present case. Mr. Rao has also read the entire circular before this court and has pointed out that it is the case of appointment from the post of assistant teacher to the post of head master and cannot be considered to be the case of promotion or transfer from the post of assistant teacher to the post of head master

and, therefore, the circular dated 5.1.1965 ought not to have been made applicable to the facts of the present case. Except these submissions, no other submissions have been made by the learned AGP Mr. M.S. Rao for the petitioner State.

I have considered the submissions made by the learned AGP Mr. Rao. I have also perused the order in question passed by the tribunal in this petition. The question raised by the respondent herein before the tribunal was as to whether the respondent applicant is entitled for the benefit of one increment as per the Government Resolution dated 27.10.1977 which is based on the earlier Government Resolution dated 5.1.1965, from the date on which he was appointed on the post of head master. The tribunal has examined this question in detail and has considered the submissions made by the learned advocates for the parties. From the facts of the present case, it appears that the respondent applicant was appointed as assistant teacher on 1st November, 1971 and he was appointed as head master in the scale of head master on 10th May, 1999. On the date of his appointment, as a head master, by virtue of his seniority and in view of the benefit of selection grade of Three Tyre, he was already drawing the pay scale of Rs.6500-10500 which is the pay scale prescribed for the post of head master and his basic pay, at the relevant time, was of Rs.9100.00. While fixing his pay in the cadre of head master, no increment was added but he was continued in the very scale without benefit of single pie. Therefore, the respondent teacher filed application as aforesaid before the tribunal and prayed for granting benefit of one increment as per the Government Resolution dated 29th October, 1977.

In para 6 of the order, the tribunal has given reasons after considering the submissions made by the learned advocates for the parties before it. The Tribunal has considered that in the event of appointment of the teacher on the post of head master in secondary school, they are entitled for the benefit of the Government Resolution dated 5th January, 1965 while fixing their salary. Considering the language of the Government resolution dated 29th October, 1977 as well as the Government Resolution dated 5th January, 1965 and considering the object of issuance of the Government Resolution dated 5th October, 1965 as well as dated 29th October, 1977, it appears that if a person is appointed on the higher post which is carrying higher responsibilities and if he is otherwise not going to get any monetary benefit in that pay scale, then, his pay is

required to be fixed by adding increment and it was the policy of the Government. The tribunal has noticed that the said policy of the State Government has been reiterated by the Government by issuing Circular by the office of the Commissioner of Higher Education on 23th January, 1998 to all the District Education Officers and then by letter dated 11th February, 1999 to the District Education Officer, Junagadh by the office of the Commissioner of Higher Education. The tribunal has also observed and noticed that by letter dated 23rd May, 2000, education department has also informed the office of the COS that on appointment of Head Master, they are entitled for the benefit of the Government Resolution dated 29th October, 1977. Therefore, the Government Resolution dated 29th October, 1977 in clear terms stipulates that the assistant teacher on being appointed as a head master in secondary school, is entitled for the benefit of one increment if he is otherwise not going to have any monetary benefit by being in the same pay scale due to his seniority. The Tribunal has also observed that despite this position and also despite the clarification made by the education department and the office of the Commissioner of Higher Education, it now appears that the objection was received about the entitlement of one increment in such cases. The tribunal was, therefore, of the opinion that so long as the Government Resolution dated 29th October, 1977 stands, such objection cannot be accepted in view of the discussion made by the tribunal in the order in question. The tribunal has also observed that the Government Resolution dated 29.10.1977 clearly stipulates giving of one increment on appointment of the assistant teacher as a head master if they are not going to get any monetary benefit and the Government has also given this benefit up till now in several such cases. Clarifications in that regard have been made by the Government from time to time by reiterating this policy from the office of the Commissioner of Higher Education as well as the Department of Education and, therefore, now it is not open for the respondent department to raise such an objection against the claim of one increment. The tribunal has also observed that the clarification of the office of the COS is that the Government Resolution dated 29th October, 1977 of the education department is not correctly reflecting the original Govt. Reso. dated 5.1.1965. The Tribunal has also observed that the Resolution dated 29.10.1977 was not challenged by the petitioner before the tribunal and, therefore, that aspect has not been examined by the tribunal but it may be open for the department to recall the said Government resolution and so long as it remains in force, it is binding to the Department. The Tribunal has also

observed that the Government Resolution dated 29th October, 1977 is not contrary to any statutory provisions nor it is arbitrary and that the post of head master is not a post of promotion and it cannot be said that the assistant teacher has been promoted on the post of head master. The important observations made by the Tribunal are to the effect that by one circular dated 15.10.2001, office of the COS Gandhinagar instructed all the DEOs to extent the benefit of one increment in such cases and, therefore, considering this Government Resolution dated 29th October, 1977 and subsequent clarification made by the department, the tribunal has come to the conclusion while keeping in mind the recent circular from the department dated 15.10.2001, that the assistant teacher who has been appointed as a head master and if he is not getting any monetary benefit in view of such appointment as head master due to his seniority or due to getting three tyre benefit, is entitled for one additional increment as per the Government Resolution dated 29th October, 1977 and, therefore the tribunal has granted the benefit of one increment relying upon the Government Resolution dated 29th October, 1977 as well as the Circular dated 15th October, 2001.Effect of the Government Resolution dated 5th January, 1965 has also been examined by the Tribunal. Therefore, considering the observations made by the tribunal and looking to the facts of the present case, present respondent was drawing salary in the scale of head master at the time when he was appointed on the post of head master, naturally, he was not getting any monetary benefit at the time of his appointment on the post of head master and, therefore, in such a situation, the tribunal granted benefit of one additional increment as per the Govt. Resolution dated 29.10.1977 to the present respondent. Therefore, according to my opinion, the matter at issue was rightly examined by the tribunal. I am also of the opinion that the tribunal has rightly interpreted the Government Resolution dated 5th January, 1965 and 29th October, 1977. Further, it is not the case of the petitioner State of Gujarat that the Government Resolution dated 29th October, 1977 has been recalled or cancelled or repealed by the State Government and in view of that, the tribunal was right in holding that so long as the said resolution dated 29th October, 1977 remain in force, assistant teacher, on his appointment to the post of head master is entitled for the benefit of one additional increment on the basis of the said resolution if he is not going to get any benefit in view of his seniority. It is necessary to note one important aspect that though there is specific observation made by the tribunal that recently also on 15th October, 2001, similar circular has

been issued by the Department and relying on that also, the Tribunal has granted the benefit of one additional increment but unfortunately that Circular dated 15th October, 2001 has not been produced on record by the petitioner. Therefore, considering all these aspects of the matter, according to my opinion, the tribunal has rightly examined the issue raised before him. The tribunal was right in appreciating the submissions made by the learned advocates for the parties and also in appreciating the Government Resolution dated 5th January, 1965 and 29th October, 1977 and 15th October, 2001 and has rightly granted the benefit of one additional increment in favour of the present respondent teacher and, thus, there is no error committed by the petitioner while passing such an order in favour of the respondent.

In Special Civil Application No. 8070 of 2003, the petitioner State of Gujarat is challenging the order of the tribunal dated 20.12.2001 in Application No. 259 of 2001 wherein the tribunal has, in view of the statement made by the Government Pleader Mr. Shah while producing the copy of the Circular dated 15.10.2001 that the DEO will process the case of the respondent teacher in the said application as per the instructions contained in the said circular, disposed of the said application with a direction to the DEO concerned to process the case of the applicant in accordance with the instructions contained in the circular dated 15.10.2001 as early as possible, preferably within two months. Such an innocuous order passed by the tribunal in view of the statement made by the G.P. Mr. Shah has been challenged by the petitioner State before this Court by filing special civil application no. 8070 of 2003. It is surprising that the petitioner State of Gujarat is challenging such an innocuous order of the tribunal wherein no controversy has been examined by the tribunal, wherein the matter has not at all been adjudicated on merits and has been disposed of only on the basis of the statement made by the G.P. appearing for the petitioner before the Tribunal. The directions issued by the tribunal in view of the statement are only to the effect that the DEO concerned has to pass appropriate order after processing the case of the respondent in accordance with the instructions contained in the circular dated 15.10.2001 and, therefore, said petition is required to be rejected. I am therefore of the opinion that the challenge to such an innocuous order of the tribunal is nothing but wastage of time and energy of the Government machinery. Such an approach of the Government is required to be condemned.

Similarly, in special civil application no. 8074 of 2003 also, similar order passed by the tribunal with similar directions dated 20.12.2001 in application no. 256 of 2001 is challenged by the petitioner and in view of what is stated above, same is also required to be rejected.

Similarly, in special civil application no. 8075 of 2003 also, similar order passed by the tribunal with similar directions dated 20.12.2001 in application no. 260 of 2001 is challenged by the petitioner which has been passed by the tribunal in view of the statement made by the Government Pleader appearing before it by relying upon the Government Circular dated 15.10.2001 and in view of what is stated above, same is also required to be rejected.

In Special Civil Application No. 8076 of 2003, similar order has been passed by the tribunal on 20.12.2001 in application no. 123 of 2001 directing the DEO concerned to process the case of the respondent teacher in accordance with the instructions contained in the Circular dated 15.10.2001 and, therefore, challenge to such an innocuous order also cannot be entertained and the same is, therefore, required to be rejected.

In Special Civil Application No. 8078 of 2003, the order passed by the tribunal dated 20.12.2001 in Application No. 170 of 2000 on the same line has been challenged by the petitioner State of Gujarat which has been decided by this court in the first matter namely Special Civil Application No. 8072 of 2003. Therefore, challenge to such an order cannot be entertained in view of the reasons recorded while considering the merits of the petition being special civil application no. 8072 of 2003. Same is, therefore, required to be rejected.

In Special Civil Application No. 8077 of 2003, the order passed by the tribunal in application no. 328 of 2000 dated 17th October, 2001 on merits has been challenged by the petitioner. The tribunal has, after considering the Government Resolution dated 29.10.1977, directed the petitioner to fix the salary of the respondent teacher by holding that the respondent is entitled for one additional increment as per the Government Resolution dated 29.10.1977 for which, detailed reasons have been given by this court while considering the merits of the matter being special civil application no. 8072 of 2003 and, therefore, for the reasons recorded in the said petition, this petition cannot be entertained and the same is, required to be

rejected.

Therefore, considering this entire group of these matters, three matters are decided by the tribunal on merits and rest of the matters are based on the statement made by the GP appearing before the tribunal wherein the DEO concerned has been directed to process the case of the applicant concerned in accordance with the instructions contained in the circular dated 15.10.2001. Specific question has been asked by this court to the learned AGPs appearing in these matters as to what has subsequently happened pursuant to these directions issued by the tribunal to the DEO concerned for processing the case of the respondents in accordance with the instructions contained in the circular dated 15.10.2001, they were not able to answer. Merits of the matter has been examined by this Court in detail in Special Civil Application No. 8072 of 2003. Therefore, even on merits also, I am of the opinion that the tribunal has not committed any error which would require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India. Learned AGPs appearing for the petitioner State were not been able to point out any procedural irregularity or infirmity in the orders passed by the tribunal. I am, therefore, of the opinion that there is no substance in these petitions and they are required to be rejected at the admission stage.

For the reasons recorded hereinabove, all these petitions are rejected.

16.6.2003. (H.K. Rathod,J.)

Vyas